



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 05/17/05

AGENDA ITEM 5A

WORK SESSION ITEM _____

TO: Mayor and City Council
Redevelopment Agency Board Members

FROM: Director of Community and Economic Development

SUBJECT: Consideration of an Amended and Restated Disposition and Development Agreement with Cinema Place Hayward, LLC for Development of an Entertainment and Retail Complex at B Street and Foothill Boulevard

RECOMMENDATION:

It is recommended that the City Council and the Redevelopment Agency Board adopt the attached resolutions authorizing the City Manager/Executive Director to execute an Amended and Restated Disposition and Development Agreement and Ground Lease with Cinema Place Hayward, LLC.

DISCUSSION:

In July 2004 the Agency Board and City Council approved a Disposition and Development Agreement (DDA) and Ground Lease with Cinema Place Hayward, LLC ("the Developer"). This company consists of a partnership between Blake Hunt Ventures and Pacific Coast Capital Partners. The project consisted of a two-story complex including approximately 47,000 square feet of ground floor retail, and a 12-screen theater plus an additional 7,000 square feet of retail/restaurant space on the upper level, as well as an adjoining four-story parking garage with 356 spaces. The Planning Commission and City Council considered and approved a project-related zone change at the time the DDA and Ground Lease were considered.

Under the original terms of the DDA/Ground Lease, the Developer would pay for and own the bottom two levels of the garage, and the Agency would pay for and the City would own the top two levels as public parking. Management of the structure would be governed by a Parking Operation and Management Agreement. In addition to funding its pro-rata share of parking construction cost, the Agency was to pay its share of the parking garage design fees and a construction management fee. The Agency's total share of the parking garage was estimated to be approximately \$3.7 million.

Under the original terms of the Ground Lease, the Developer/Tenant, would begin paying ground rent to the Agency at the beginning of the sixth year after the start of site clearance activities (by August 1, 2010). There is a base rent payment of \$50,000 per year, plus additional percentage rent payments, plus adjustments to the base rent beginning in year 25 of the lease. The lease

term is for 50 years, with two five-year renewal options. At the end of the lease term, the improvements on the property revert to the Redevelopment Agency or its successor.

Since the time the DDA was adopted, construction costs have risen significantly – particularly for materials such as concrete and steel. The Developer obtained new estimates late last fall and determined that total direct construction costs had increased by approximately \$3.4 million over the estimates they had provided in June 2004. As a result of these cost increases, the Developer is projecting reduced returns on its investment in the project and can no longer afford to undertake the project as originally conceived.

Because we think a theater and retail uses are integral to the City's ongoing efforts to revitalize downtown, staff worked with the developer to identify a suitable alternative. As a result of these discussions the Agency is asked to approve a one-story retail/theater project and garage under this proposal, however, the Agency would pay for the entire cost of the garage. The theater would remain at the same size but would now be on ground level and the amount of retail space will be reduced to approximately 12,500 square feet. As a result, the project will no longer be large enough to house a Cost Plus World Market. The Parking Garage will be reduced by one floor, and contain 241 spaces. The City Council has considered a determination that the proposed modified project is consistent with the prior approved Preliminary Development Plan in work session earlier today and will be asked to take formal action at its meeting of June 7, 2005. Because there are no new significant environmental effects, nor an increase in the severity of previously identified significant effects, the Agency/City can rely on the previously approved Mitigated Negative Declaration for the modified project.

Under the proposed amended terms of the DDA/Ground Lease, the Agency's property would be subdivided in a manner similar to the B Street Marketplace property. The Agency will retain ownership and control of the parking area, and the retail land will be ground leased to the Developer. The Developer will design and build the retail/theater project; however, the parking structure will be designed and built by the Agency as a public facility. In addition, the Agency will pay the developer for its proportional share of site work costs, excluding deconstruction costs.

The Ground Lease payment provisions would be the same as under the existing agreement except for the following changes. Under the amendment, rent payments would start in January 2006. In addition, the threshold tenant income level for the payment of percentage rents under the lease would be adjusted from \$1.5 million down to \$660,000 in order to account for the reduced size of the project. Although the parking structure would be operated as a public garage, the Developer/Tenant would continue to pay for one-half of the maintenance costs of the garage.

In addition to the Ground Lease payments, at such time as the Developer sells the completed project, the Developer would share the distribution of sale profits after re-payments of all construction loans, equity capital plus a 10-12% preferred return on such equity, and a profit to the developer of \$875,000. At that point, the Agency would receive the next \$500,000 and after that, proceeds would be split between the Developer and the Agency. At this time, we are unable to provide any assurance that the project will generate enough profit to allow for such proceeds;

however, if rents were to increase significantly, or costs were to decline again, the Agency could stand to receive some repayment of its garage costs.

With regard to the construction schedule, the proposed deconstruction of the former grocery store building would be in September 2005; however, the B & Foothill parking lot itself would remain in service through the end of the year holidays to accommodate downtown merchants. Site preparation, including clearance of the parking lot, would begin in March 2006 after the rainy season is largely over, and after building permits are ready to be issued. Construction of both the parking garage and the retail/theater building is expected to take place simultaneously from April 2006 until early 2007. It is anticipated that the center will be open to the public by April 2007. Both the developer and staff are committed to working on opening the complex sooner, if at all possible.

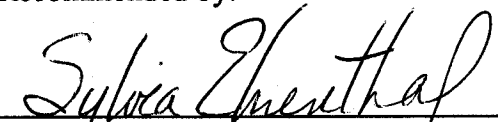
As required pursuant to Redevelopment Law, staff prepared a report outlining the terms of the proposed Amended and Restated DDA and Lease, as well as a re-use appraisal of the property that is proposed to be conveyed to the Developer. That report outlined the estimated costs and revenues to the Agency that would result from the proposed Project. The report concluded that the total of the Agency's costs under the Agreement, including both its land costs to date and its estimated parking costs would be approximately \$9.4 million. The Agency's total revenues over the life of the lease are estimated at approximately \$30.4 million. In addition, the Agency will have a garage asset worth its total estimated cost of \$5.8 million (see Attachment A).

In addition to the financial considerations summarized above, there are benefits for undertaking this project which cannot be easily quantified. As previously noted, the proposed Project has the potential to create a landmark attraction for the downtown area, which will draw people into the downtown area, stimulate patronage for existing downtown businesses, and potentially help to reduce vacancies in existing buildings. The parking garage will not only serve the proposed development, but all of downtown. Finally, the project will generate sales tax revenues, as well as property taxes to the City when the Project Area terminates in approximately 2027, and ultimately the rents or revenue that will be generated by selling the real estate when the Agency ceases to exist and its assets are transferred to the City. Staff therefore recommends approval of this project. Notice of this Joint Public Hearing was published in The Daily Review during the past two weeks.

Prepared by:


Maret Bartlett, Redevelopment Director

Recommended by:


Sylvia Ehrenthal, Director of Community
and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments: Attachment A – Agency Costs and Revenues
Resolutions

ATTACHMENT "A"

CINEMA PLACE SUMMARY OF AGENCY COSTS AND REVENUE

Projected Gross Agency Costs

As of July 2004 the Agency has expended approximately \$3,539,000 to purchase the Property and bring it to a state of readiness for disposition to the Developer under the terms of the DDA. The Agency's costs to date include:

Land purchases, title & escrow	\$3,441,266
Legal	21,498
Property Maintenance	20,564
Environmental	34,676
Survey	29,115
Economic Consultant	21,970
Sub-total	\$3,569,089
Less Rental Receipt (Spirit Halloween Stores)	(\$30,000)
Net to date costs	\$3,539,089

It is estimated that an additional \$63,000 will be incurred prior to transferring the property to the Developer, as follows:

Legal	\$15,000
Environmental	\$30,000
Property Maintenance	\$18,000
Total Additional Costs	\$63,000

Under the DDA and Lease the Agency will have the following estimated liabilities:

Agency Parking Garage Construction Cost (at \$17,000 per space x 241 spaces)	\$4,100,000
Parking Design and Administration	\$600,000
Agency Site Development Costs	\$803,317
Total LDA/Lease Costs	\$5,503,317
Total All Agency Costs of Proposed Development (Round to \$9,100,000)	\$9,105,406

Projected Revenue to the Agency

1. **Revenue from the Lease of Property:** Based on the proposed Ground Lease Terms, and the lease rates projected by the Developer, the total rent received for the Property over the 50-year primary lease term is estimated to be approximately \$5.8 million, or \$1,046,000 when discounted to present value.
2. **Revenue from Tax Increment:** The estimated value of the Retail/Theater Project, including the incremental value of the retail site is estimated to be \$9.5 million. This does not include the parking garage, which is a public facility and is not subject to property taxes. Based on this value, the total revenue stream from property tax increments to the Agency is estimated to be \$2 million, or \$1,151,000 discounted to present value.
3. **Reversion Value:** Because the Agency (or its successor, the City of Hayward) will continue to own the land and improvements after the term of the Lease, the Property will have ongoing value. At the end of the lease term, the value of the Project (net of the parking garage) is estimated to be \$22 million, or \$704,000 discounted to present value.

Net Cost/Gain to the Agency/City

The net cost to the Agency is the difference between projected revenues and costs:

Agency Revenue	Present Value
Revenue from the Lease	\$889,000
Revenue from Tax Increment	\$1,151,000
Potential Value from Reversion	<u>\$704,000</u>
Sub-total Agency Revenue	\$2,901,000
Value of Agency Parking Garage Asset (building @ \$5,503,000 + land at \$1,428,000)	<u>\$6,931,000</u>
Total Agency Revenue	\$9,832,000
Less Estimated Agency Costs	(\$9,100,000)
Net Gain/Loss	\$732,000

DRAFT 

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HAYWARD APPROVING AND AUTHORIZING THE
EXECUTION OF AN AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN THE REDEVELOPMENT AGENCY OF THE
CITY OF HAYWARD AND CINEMA PLACE HAYWARD,
LLC**

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Downtown Hayward Redevelopment Project (the "Redevelopment Project"); and

WHEREAS, the Agency has negotiated a proposed Amended and Restated Disposition and Development Agreement (the "DDA") with Cinema Place Hayward, LLC (the "Developer") which provides for the lease and development of certain real property owned by the Agency within the Redevelopment Project (the "Site") with: (i) a one-story retail cinema complex, including approximately 12,500 sq. ft. of rentable retail space and a 12-screen, 1,800 seat movie theater; and (ii) an adjacent three-level parking garage with approximately 241 spaces (the "Parking Structure") to be constructed and owned by the Agency and which will be available to the general public on a non-exclusive basis (the "Development"); and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a summary of the financial aspects of the proposal; and

WHEREAS, an initial study and mitigated declaration was previously prepared by the City for the project pursuant to the California Environmental Quality Act ("CEQA"),

determining that the project, with the recommended mitigation measures, could not result in significant effects on the environment; and

WHEREAS, Community Redevelopment Law provides in Section 33445 that an agency may, with the consent of the legislative body, pay for all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body makes certain findings; and

WHEREAS, notice of a joint public hearing by the City Council of the City of Hayward (the "City Council") and the Agency was published in the Daily Review on May 3, 2005, and May 10, 2005; and

WHEREAS, the Agency has prepared a summary report (the "Report") pursuant to Section 33433 of the Health and Safety Code describing the cost of the Amended and Restated DDA to the Agency, the value of the property interest to be conveyed, and other information required by said Sections 33433, and said Report was made available to the public for inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

Section 1. The City Council hereby finds and determines that:

(a) The construction and payment by the Agency of the cost of construction of the proposed Parking Garage is of benefit to the Project Area and the immediate neighborhood in which the Development is located.

(b) No other reasonable means of financing the Parking Garage is available to the community.

(c) The lease of the Theatre/Retail Complex Parcel by the Agency and construction by the Agency of the Parking Garage will assist in the elimination of blight.

(d) The lease of the Theatre/Retail Complex Parcel by the Agency and construction by the Agency of the Parking Garage is consistent with the Implementation Plan for the Redevelopment Project.

The foregoing findings are based on the facts contained in the Report and the staff report of the Agency.

Section 2. The City Council hereby finds and determines that the consideration to be received by the Agency for the lease of the Site is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Amended

and Restated DDA and the Lease. This finding is based upon the facts and information contained in the Report.

Section 3. The City Council hereby approves the Amended and Restated DDA in substantially the form on file with the Secretary of the Agency and authorizes the City Manager to execute the same on behalf of the Agency and to take all actions necessary to carry out its provisions, including, without limitation, the execution of any documents.

Section 4. The City Council finds that the proposed modification to the project will not produce any new or significantly increased environmental effects warranting further CEQA review and hereby relies on the previously approved Mitigated Negative Declaration.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA _____

Introduced by Agency Member _____

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF
THE CITY OF HAYWARD APPROVING AND
AUTHORIZING THE EXECUTION OF AN AMENDED AND
RESTATED DISPOSITION AND DEVELOPMENT
AGREEMENT BETWEEN THE REDEVELOPMENT
AGENCY OF THE CITY OF HAYWARD AND CINEMA
PLACE HAYWARD, LLC

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Downtown Hayward Redevelopment Project (the "Redevelopment Project"); and

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WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for

public inspection a copy of the proposed sale or lease and a summary of the financial aspects of the proposal; and

WHEREAS, Community Redevelopment Law provides in Section 33445 that an agency may, with the consent of the legislative body, pay for all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body makes certain findings; and

WHEREAS, notice of a joint public hearing by the City Council of the City of Hayward (the "City Council") and the Agency was published in the Daily Review on May 3, 2005, and May 10, 2005; and

WHEREAS, an initial study and mitigated declaration was previously prepared and approved by the City for the project pursuant to the California Environmental Quality Act ("CEQA"), determining that the project, with the recommended mitigation measures, could not result in significant effects on the environment; and

WHEREAS, the Agency has prepared a summary report (the "Report") pursuant to Section 33433 of the Health and Safety Code describing the cost of the amended and restated DDA to the Agency, the value of the property interest to be conveyed, and other information required by said Sections 33433, and said Report was made available to the public for inspection.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Hayward as follows:

Section 1. The proposed modification to the project will not produce any new or significantly increased environmental effects warranting further CEQA review and the Agency hereby relies on the previously approved Mitigated Negative Declaration.

Section 2. The Agency hereby finds and determines that:

(a) The construction and payment by the Agency of the cost of construction of the Parking Garage is of benefit to the Project Area and the immediate neighborhood in which the Development is located.

(b) No other reasonable means of financing the Parking Garage is available to the community.

(c) The lease of the Theatre/Retail Complex Parcel by the Agency and construction by the Agency of the Parking Garage will assist in the elimination of blight.

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The foregoing findings are based on the facts contained in the Report and the staff report of the Agency.

Section 3. The Agency hereby finds and determines that the consideration to be received by the Agency for the lease of the Site is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Amended and Restated DDA and the Lease. This finding is based upon the facts and information contained in the Report.

Section 4. The Agency hereby approves the Amended and Restated DDA in substantially the form on file with the Secretary of the Agency, and authorizes the Executive Director to execute the same on behalf of the Agency and to take all actions necessary to carry out its provisions, including, without limitation, the execution of any documents.

HAYWARD, CALIFORNIA_____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
MAYOR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST:_____

Secretary of the Redevelopment Agency

APPROVED AS TO FORM:

General Counsel